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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JASON LEE SUTTON,

Plaintiff,

v.

PIERCE COUNTY SHERIFF, *et al.*,

Defendants.

Case No. C07-5505 BHS/KLS

REPORT AND
RECOMMENDATION

NOTED:
September 19, 2008

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. §§ 636(b)(1) and Local MJR 3 and 4. The Court is advised by Plaintiff that he no longer wishes to pursue this action. (Dkt. # 54). Defendants join in Plaintiff's motion to dismiss. (Dkt. # 55). Accordingly, the undersigned recommends that this action be dismissed pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

DISCUSSION

On September 20, 2007, Plaintiff filed an application to proceed *in forma pauperis* and submitted a proposed complaint. (Dkt. # 1). On October 22, 2007, Plaintiff's application to proceed *in forma pauperis* was granted and Plaintiff was ordered to file an amended complaint. (Dkts. # 8, 10). On November 9, 2007, Plaintiff filed his Amended Complaint. (Dkt. # 13).

Defendants filed their Answer to Plaintiff's Amended Complaint on June 20, 2008. (Dkt. #

REPORT AND RECOMMENDATION

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1 42). On July 24, 2008, Defendants filed a motion for summary judgment. (Dkt. # 49).

2 On August 15, 2008, Plaintiff filed a motion to dismiss pursuant to Fed. R.Civ.P. 41(a)(1).
3 (Dkt. # 54). Plaintiff's motion states that he moves the court for an order "dismissing the above-
4 entitled action with prejudice and without costs to any party pursuant to FRCP 41(a)(1)." *Id.*

5 Rule 41(a)(1) of the Federal Rules of Civil Procedure provides, in pertinent part:

6 [A]n action may be dismissed by the plaintiff without order of court (i) by
7 filing a notice of dismissal at any time before service by the adverse party of
an answer or of a motion for summary judgment, whichever first occurs

8 In this case, Defendants have filed their answer and a motion for summary judgment. (Dkts.
9 # 42 and 49). However, they join in Plaintiff's motion to dismiss this action. (Dkt. # 55).

10 CONCLUSION

11 The Court should dismiss this action as Plaintiff has voluntarily requested dismissal (Dkt. #
12 54) and Defendants are not opposed to the dismissal. A proposed order accompanies this Report
13 and Recommendation.

14 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,
15 the parties shall have ten (10) days from service of this Report and Recommendation to file written
16 objections. *See also* Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those
17 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time
18 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **September**
19 **19, 2008**, as noted in the caption.

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21 DATED this 2nd day of September, 2008.

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25 Karen L. Strombom
26 United States Magistrate Judge
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